IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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Praveen Kumar Gupta Vs. Jag Bhusan & Ors.

S.B. CIVIL MISC. APPEAL No.580/1994.

Against the judgment and award dated 08.04.1994 made by the Motor Accidents Claims Tribunal, Sriganga-nagar in Claim Case No.60/1988.

Date of Judgment :: 4th October 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. D.R. Lunkar, for the appellant.
Mr. R.K. Singhal }
Mr. Manoj Garg }, for the respondents.

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BY THE COURT:

This is claimant's appeal seeking enhancement over the amount of Rs.14,000/- awarded by the Motor Accidents Claims Tribunal, Sriganganagar in its award dated 08.04.1994 made in Claim Case No.60/1988.

The claim application seeking compensation in the sum of Rs.16,68,000/- was submitted by the claimant-appellant on 25.01.1988 stating his age at 25 years and his monthly income at Rs.1,000/- from tuitions and Rs.1,400/- from house

rent. The claimant submitted that on 26.07.1987 at about 12:30 p.m. while he was riding his moped bearing registration No. RNC 2324 and was proceeding towards his house at Purani Abadi, Sriganganagar, near the main road he spotted a maruti car bearing registration No. PCL 8655 approaching the circle and he halted the moped before the circle maintaining balance by keeping his left foot on the road; but the driver of the car lost control because of rashness and total negligence; the car hit the moped and the claimant resulting in fracture on his right leg; he was removed to hospital in the same car where he was admitted in male surgical 'B' unit at Bed No.9; then his statements were recorded by the police and criminal case No.542/1987 was registered.

While stating the liability of the car driver, owner and insurer for compensation, for quantification the claimant took the averments that his grand-parents were healthy in 81 years of age and so were his parents in 52 years of age; the claimant himself was maintaining good health and attractive personality; that he had expectation of long lift span; that his parents were first class income tax payers; that he had obtained post- graduation of M.Com and double M.A. with first class marks and so also M.Phil with good marks; that he was selected in SBBJ; that for better future prospects he left the job and joined in the Education Department of the Government of Rajasthan as Lecturer in the Post Graduate College; that for yet better future he left the job,

cleared preliminary examination of Indian Civil Services and was engaged in the studies for the main examination; that his studies were disrupted because of the accident snatching away the chances of his getting selected in Civil Services; it was his last chance and now he would never be able to compete for such Services. It was further stated that the claimant having suffered permanent physical disablement, is not fit to be selected in Government or Semi-Government services resulting in substantial loss of his earnings. The claimant averred that if the accident would not have occurred he would have been selected in Civil Services that would have enhanced his social status; and he would have had the prospects of getting married to a beauty of equal qualification from a family of high social status; and now because of permanent disablement and limping, he was not receiving marriage proposals either. It was further stated that the claimant suffered compound fracture of tibia and fibula bones and because of fibula not joining, he was under permanent apprehension of fracture even on a simple injury and would not be able to participate in the sports loosing out amenities of life and would remain dependent on special diet, treatment, physiotherapy and attendant.

The claimant stated that he suffered pain and agony from 26.07.1987 to 30.07.1987; then was required to be removed to house because of lack of facilities at the hospital; that he was required to take treatment and physiotherapy from the

specialists at his residence and to take special diets; that for his leg remaining in plaster for two months, his family members had to attend on him round the clock; that he had to visit Delhi in car; had to call for X-ray machines at his residence; had to bear special walking implements and had to take an attendant to take Civil Services Main Examination and had to incur transportation expenditure for commuting by taxi.

Thereafter, the claimant named his various relatives who visited him from different places and alleged having spent on their traveling, lodging and boarding and of extending gifts to them. The claimant put forward the claim in the sum of Rs.11,040/- on special diets for 184 days; Rs.5,460/- towards treatment expenditure including the expenditure for visiting Delhi; Rs.4,000/- for loss of income for four months; Rs.14,500/- spent on the visiting friends and relatives; Rs.5,000/- towards the services of his family members and practice loss of his advocate father; and Rs.2,000/- for taxi expenditure for taking examination. Thereafter, the claimant claimed Rs.13,50,000/- for the loss of income of 30 years on the basis of average salary of an IAS officer after deducting Rs.1,500/- of his existing average income and further deducting 25% towards lump sum payment. The claimant-appellant further claimed Rs.25,000/- towards future expenditure; Rs.50,000/- towards mental agony and inconvenience; Rs.2,00,000/- towards reduction in longevity of life and mental illness and for not getting proper life partner, and

another Rs.1,000/- towards production of evidence in the criminal case and for obtaining papers.

The non-applicants contested the claim made by the appellant; inter alia, with the submission that the accident occurred due to his own fault and negligence. The quantum of compensation was also put to contention. On the pleading of the parties, the following issues were framed:

> "(1) आया प्रार्थना-पत्र की मद नं0 10 व 12 के विवरण अनुसार घटना घटी व इसलिये इस दुर्घटना के लिए अप्रार्थीगण उत्तरदायी है ?
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> (2) आया प्रार्थना -पत्र की मद नं0 11 के विवरण अनुसार प्रार्थी अप्रार्थीगण से हर्जाना पाने का अधिकारी है ?
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> (3) आया बीमा कम्पनी के जवाब की मद नं0 17 के विवरण अनुसार प्रार्थी को मोपेड का बीमा कराना चाहिये था व नहीं कराने से प्रार्थी उक्त क्लेम पाने का अधिकारी नहीं है ?
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> (4) आया प्रार्थना की मद नं0 18 के कथनानुसार दुर्घटना की इतिला बीमा कम्पनी को नहीं दी गई सो उसका उत्तरदायित्व नहीं बनता है ?
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> (5) आया वाहन चालक पर ड्राईविंग लायसेन्स नहीं था सो बीमा कम्पनी का उतरदायित्व नहीं बनता है ?
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> (6) अनुतोष ? "

In oral evidence, the claimant Praveen Kumar examined himself as AW-1, Narendra Kumar an alleged eye-witness to the accident as AW-2, Indra Kumar Goyal, brother-in-law of the claimant whose moped the claimant was riding at the time of accident as AW-3; and Kishan Lal Gupta, father of the claimant as AW-4. The non-applicant examined the car driver, Jag Bhusan as NAW-1.

After hearing the parties, the learned Judge of the Tribunal found the accident to have occurred for the omission of caution on the part of the car driver and held the non-applicants liable for compensation in issue No.1. Issue Nos. 3, 4 and 5 framed on the plea taken by the insurer were all decided against the insurer, non-applicant No.3. Finding on issue Nos. 1, 3, 4 and 5 need no further dilatation in this appeal preferred by the claimant for enhancement of the amount of compensation.

Taking up quantification of compensation in issue No.2, the learned Judge of the Tribunal examined the entire evidence on record and various components of the claim made by the appellant and found the claim for compensation highly exaggerated and considered it proper to allow compensation in the sum of Rs. 14,000/- on the following heads:

1.	For dietary expenditure:	Rs. 2,000/-
2.	For treatment expenditure:	Rs. 2,000/-
3.	For grievous injury:	Rs. 5,000/-
4.	For pains and sufferings:	Rs. 5,000/-

The Tribunal has, therefore, made the award in the sum of Rs.14,000/- in favour of the claimant-appellant and has allowed interest @ 12% per annum from the date of filing of claim application.

In this appeal the claimant has questioned the quantum of compensation awarded by the Tribunal. Learned

counsel for the claimant has asserted that the Tribunal has been seriously in error in not awarding just compensation in this case and in restricting the compensation to a meager amount of Rs. 14,000/- only and in view of the long drawn treatment and set back suffered by the claimant in his life and career prospects, reasonable compensation ought to have been allowed. Learned counsel for the insurer has duly supported the impugned award.

Having given anxious consideration to the entire matter and having scanned through the record this court is satisfied that the claim for compensation was made in this case in a highly exaggerated manner and the Tribunal cannot be said to have erred in making the award in the moderate sum of Rs. 14,000/-. This appeal being totally bereft of substance deserves to be dismissed.

The claimant has of course sustained grievous injury of fracture of tibia and fibula bones and reasonable compensation on that count could have been and ought to be awarded but the manner in which the claimant has put forward his case seeking compensation for strange expenditure and on unknown heads makes it absolutely clear that the claim for compensation was not submitted in bonafide manner and was rather intended to seek bonanza in the name of just compensation. Such an attempt at profiteering in the name of claim for compensation in a vehicular accident case cannot be countenanced; and in the overall circumstances of the case, this

Court is satisfied that the Tribunal has not committed any error in restricting the award in the sum of Rs. 14,000/-.

As noticed above, the major component of claim made by the appellant comprised of an amount of Rs.13,50,000/- towards loss of future earning on the basis of average salary of an officer of Indian Administrative Services. Another amount of Rs. 2,00,000/- was claimed towards mental illness, loss of amenities of life, shortening of life span and loss of proper marriage prospects. The claims so made remain fundamentally baseless. In a vehicular accident claim case the compensation to be awarded is assessed on some basic principles like those explained by the Hon'ble Supreme Court in R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd. & Ors. : 1995 ACJ 366 thus:

> "Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury

> the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In the present case, the claimant-appellant suffered fracture of right tibia and fibula bones and as per his statement, had to remain on plaster for three months. However, beyond this evidence there is no other evidence on record that he carries any kind of disability. He has stated that even after joining of the bones his leg has not regained its original shape, he feels some awkwardness while walking, and some pain at the place of fracture. He has then stated that he feels his right leg to have shortened but was not sure in that regard and that there were certain rings formed at the place of joining of the bones; but, according to the claimant, he could not say further in that regard and only the doctor concerned would be able to say so. Significantly, while making such an elaborate claim the claimant has not produced any medical evidence on record that could prove anything towards the after-effects of the injury as alleged by him. The claimant has gone to the extent of asserting that before the accident he was smooth in nature and has now become irritable carrying mental stress. This much of co-relation with a healed-up fracture of tibia fibula bones is difficult to be accepted even on extreme conjectures; and cannot by any standard be adopted as basis for any part of compensation by

treating it to be any kind of perceptible loss co-related with the injury sustained in the accident.

Further, according to the claimant, if he had become an IAS officer then he would have got married in a respectable family or to an IAS girl that would have enhanced his social status. It is true that the appellant has proved on record that he was preparing for Civil Services examinations; that after the accident he got the result of his preliminary examinations and having been successful he was preparing the mains; and that due to the accident he could not study properly and lost interview call by about 5-7 marks. The claimant has also shown his reasonably first-class academic career; his having being selected in the Bank and then as a Lecturer. However, the claimant has also admitted that he did appear in the same Civil Services examinations in the year 1985 and so also in the year 1986 and on both the occasions could not clear the main examination. He has stated that in the month of June 1985 his father met with an accident sustaining fracture of femur bone and he remained in his attendance; and that in the year 1986 there was no specific reason for his securing lesser marks except that he was a bit indisposed. The question is as to whether the defeat of the claimant in the examination of the year 1987 be attributed only to the accident in question and then to award compensation towards the assumed loss of his chance to become an Administrative Service officer and loosing his future prospects?

This Court is clearly of opinion that the suggestions as put forward by the claimant are too far stretched and do not merit acceptance. The loss suggested by the claimant is shrouded in so much of imponderables and uncertainties that it looses to be a component of loss to be quantified in monetary terms for a vehicular accident victim. Even accepting the case of the claimant that the accident caused disruption in his studies, it could only be said that he had the potential of having cleared the written examination; but then, it cannot be said that but for the accident he was bound to be selected to and then appointed on the post aspired for.

So far social status and marriage prospects are concerned, they again remain the matters of uncertainties and so also comparative estimations. It is difficult to appreciate the submission of the claimant that his social status would have got impetus by becoming an Administrative Officer only and he would have got a better life partner for that reason alone. The contentions sound hollow and unrealistic and are not apposite even for a wishful thinking what to say of reality. Be that as it may, such unnecessary and baseless claim for compensation based on unacceptable philosophies need no further exposition; and suffice it to say that even if whatever projected by the appellant be accepted on its face value, the same does not convert itself into such monetary loss that is required to be compensated. What is compensated in a vehicular accident

claim case is the loss suffered by the claimant directly as a result of the accident and not the remote and hypothetical and imaginary losses as suggested by the claimant.

In the present case, the claimant has not suffered any loss of future income or earning capacity; nor in the amenities of life. As noticed, no permanent disablement has been shown and significantly, the appellant was selected as Assistant Administrative Officer by the same Insurance Company he is claiming compensation against, i.e., the non-applicant No.3; and admittedly he was medically examined and there was no impediment in his selection on the medical grounds. No case for awarding any compensation on the ground of loss of income or even on the loss of amenities of life is made out.

It was asserted in the claim application that at the time of accident the claimant was earning Rs.1,000/- per month in tuitions and Rs.1,400/- by way of house rent. Obviously, there cannot be any erosion in the house rent income for three months' immobility and so far tuition income is concerned, not a single student or his guardian were produced in evidence to testify payment of tuition fees to the appellant. The testimony of claimants' brother-in-law of having extended coaching to the students of the claimant deserves to be rejected for uncertainty and vagueness. No other proof has been produced on record to consider loss of existing income for the claimant. The claim

towards loss of income, present or future, was totally baseless and has rightly been rejected in toto.

Another strange component of compensation was put forward by the appellant with the submissions that Rs.14,500/- were spent on the friends and relatives visiting. In the first place there is no evidence for such expenditure and secondly such component again cannot be countenanced towards reasonable loss occasioned to a victim of vehicular accident. Such personal calls are a matter of voluntary help by and/or anxiety and/or social etiquettes of family members, relatives, friends and well-wishers in the society of any victim of an accident but such calls cannot partake the character of loss for the victim and cannot be converted into monetary compensation. The claimant, in order to seek compensation in this regard has gone to the extent of suggesting that such visiting relatives were required to be extended gifts on their visits and has claimed compensation on that count too. Again, such extending of gifts is a matter of affinity in the family or between the friends; but not a matter of claiming compensation about.

Having examined the matter in its entirety, this Court is satisfied that the claim application was more aimed at earning profit rather than seeking compensation. The Tribunal has yet proceeded to award Rs.14,000/- that is not less than just compensation admissible in this case. The claimant has suffered the fracture of tibia fibula bones and in view of the bills produced

and taking an overall view of the matter, the Tribunal has allowed Rs.2,000/- towards treatment expenditure and another Rs.2,000/- towards special diets, Rs.5,000/- towards one grievous injury and another Rs.5,000/- for non pecuniary loss. For the accident occurring in the year 1987, the amount so awarded in the impugned award made in the year 1994 cannot be said to be too low or grossly inadequate. The Tribunal has further allowed interest @ 12% per annum for over six years of pendency of the claim application. On the whole, the Tribunal has allowed just compensation to the appellant and this appeal for enhancement does not merit acceptance.

The appeal fails and is, therefore, dismissed. However, in the circumstances of the case parties are left to bear their own costs.

[DINESH MAHESHWARI], J.

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